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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,103	10/12/2001	Benjamin J. Zurn	44046.103.159	1709

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INTELLECTUAL PROPERTY GROUP
FREDRIKSON & BYRON, P.A.
4000 PILLSBURY CENTER
200 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402

EXAMINER

GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

8K

Office Action Summary

Application No.

09/977,103

Applicant(s)

ZURN ET AL.

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 25-34 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 10 July 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

The following office action is in response to the amendment filed on August 25, 2003.

Claims 1-21 have been withdrawn from consideration, claims 22-24 have been cancelled, and claims 25-34 are rejected as set forth below.

Election/Restrictions

1. Applicant's election with traverse of the restriction in Paper No. 3 is acknowledged. The traversal is on the ground(s) that examination of all of the claims would not cause serious burden on the examiner. This is not found persuasive because if the examiner examined all of the claims together, he would have to search additional classes for the method and kit claims. These additional classes might not necessarily be related to the window claims. For example, if the examiner examined the kit claims containing the drill bit, he would have to look in the drill bit art. The examiner does not have to look in the drill bit art for the window. Therefore, serious additional burden would be placed on the examiner if all of the claims were searched at the same time.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In regard to claim 32, the scope of the claim is indefinite because the applicant is describing the size of the bore with respect to an element that has not been positively claimed, i.e. the rivet. Therefore, the size of the bore is not clear. Appropriate correction is required.

Drawings

The drawing correction filed on July 10, 2003 has been received. Said correction is acceptable.

Claim Rejections - 35 USC § 102

1. Claims 25-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Guhl et al. (6,463,706).

In regard to claim 25, Guhl discloses an in situ insulating glass unit (figure 10) encased in a frame 110, 114, the insulating glass unit comprising a pair of panes 64, 70 and a peripheral spacer 112 having an outer wall extending between the panes, the outer wall of the peripheral spacer defining a hole communicating with a between-pane space defined by the panes and the spacer, and the frame 114 defining a bore 132 fluidly communicating with the hole. The examiner would like to point out that although Guhl refers to the member 112 as a sash, it also serves to space the panes apart. Therefore, it could also be referred to as a spacer. Further, the outer wall of the spacer is between the planes of the glass panes. Therefore, it is between the panes.

In regard to claims 26-31, Guhl discloses the claimed invention, wherein the bore and the hole allow gas to flow and fluidly communicate the between-pane space with an atmosphere, the bore extends through the frame, and the pressure inside the between-pane space is equalized so that it is equal to the atmosphere. Although Guhl does not specifically state that the pressure is

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equalized with the atmosphere, his hole and bore clearly communicate with the atmosphere.

Therefore, it is inherent that the pressure inside the between-pane space and the atmosphere with be the same.

In regard to claim 32, Guhl discloses the claimed invention, wherein the bore has a diameter large enough to allow a rivet to pass through the frame.

2. Claims 25-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Rossini (5,596,151).

In regard to claim 25, Rossini discloses an in situ insulating glass unit (figure 2) encased in a frame 11, the insulating glass unit comprising a pair of panes and a peripheral spacer 13 having an outer wall extending between the panes, the outer wall of the peripheral spacer defining a hole communicating with a between-pane space defined by the panes and the spacer, and the frame defining a bore fluidly communicating with the hole.

In regard to claims 26-31, Rossini discloses the claimed invention, wherein the bore and the hole allow gas to flow and fluidly communicate the between-pane space with an atmosphere, the bore extends through the frame, and the pressure inside the between-pane space is equalized so that it is equal to the atmosphere.

Claim Rejections - 35 USC § 103

4. Claims 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guhl (6,463,706) in view of Tremblay (5,345,734).

In regard to claims 33-34, Guhl discloses the claimed invention except for specifically disclosing the use of a rivet disposed in the bore of the frame and free to move between a first position that does not obstruct the hole and a second position that obstructs the hole. However,

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Guhl does disclose the use of plugs 96 and 130 that are movable between first and second positions. Tremblay teaches that the use of rivets in window assemblies is known. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use rivets in place of Guhl's plugs, because the rivets will not come out of the hole or bore after they have been installed. Therefore, one will not have to worry about the hole or bore allow the gas to escape after the pressure has been equalized.

Response to Arguments

5. Applicant's arguments with respect to claims 25-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031.

The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

B.G. *B.G.*
November 3, 2003


Carl D. Friedman
Supervisory Patent Examiner
Group 3600